

Amendment No. 1 to HB2787

Fowlkes
Signature of Sponsor

AMEND Senate Bill No. 2931

House Bill No. 2787*

FILED

Date _____

Time _____

Clerk _____

Comm. Amdt. _____

by deleting all language after the enacting clause and by substituting instead the following:

SECTION 1. Tennessee Code Annotated, Title 66, is amended by adding sections 2 through 4 of this act as a new, appropriately designated part.

SECTION 2. As used in this act, unless the context otherwise requires:

(1) "Action" means any civil action for damages or indemnity asserting a claim for damage to or loss of commercial property caused by an alleged construction defect, but does not include any civil action or arbitration proceeding asserting a claim for alleged personal injuries arising out of an alleged construction defect.

(2) "Claimant" means an owner, including a subsequent purchaser, tenant, or association, who asserts a claim against a contractor, subcontractor, supplier, or design professional concerning a construction defect.

(3) "Commercial property" means all property which is not residential property. Residential property is property upon which a dwelling or improvement is constructed or to be constructed consisting of one dwelling unit intended as a residence of a person or family.

(4) "Construction defect" means a deficiency in, or a deficiency arising out of, the design, specifications, surveying, planning, supervision, observation of construction, or construction or remodeling of a structure resulting from:

(A) Defective material, products, or components used in the construction or remodeling;

(B) A violation of the applicable codes in effect at the time of construction or remodeling;

(C) A failure of the design of a structure to meet the applicable professional standards of care at the time of governmental approval, construction or remodeling; or

(D) A failure to construct or remodel a structure in accordance with accepted trade standards for good and workmanlike construction at the time of construction or remodeling.

(5) "Contractor" means any person, firm, partnership, corporation, association, or other organization that is legally engaged in the business of designing, developing, constructing, manufacturing, selling, or remodeling structures or appurtenances thereto.

(6) "Design professional" means a person licensed in this state as an architect, interior designer, landscape architect, engineer, or surveyor.

(7) "Notice of claim" means a written notice sent by a claimant to the last known address of a construction professional against whom the claimant asserts a construction defect that describes the claim in reasonable detail sufficient to determine the general nature of the defect, including a general description of the type and location of the construction that the claimant alleges to be defective and any damages claimed to have been caused by the defect.

(8) "Structure" means any building or improvement and its components, systems, fixtures and appurtenances at the time of completion of construction.

(9) "Service" means personal service or delivery by certified mail to the last known address of the addressee.

(10) "Subcontractor" means a contractor who performs work on behalf of another contractor in the construction or remodeling of a structure.

(11) "Supplier" means a person who provides materials, equipment, or other supplies for the construction or remodeling of a structure.

SECTION 3. If a claimant files an action without first complying with the requirements of this act, on motion by a party to the action, the tribunal having

jurisdiction shall abate the action, without prejudice, and the action may not proceed until the claimant has complied with such requirements.

SECTION 4.

(a) In actions brought against a contractor, subcontractor, supplier, or design professional related to an alleged construction defect, the claimant shall, before filing an action, serve written notice of claim on the contractor, subcontractor, supplier, or design professional, as applicable. The claimant shall endeavor to serve the notice of claim within fifteen (15) days after discovery of an alleged defect, but the failure to serve notice of claim within fifteen (15) days does not bar the filing of an action, subject to Section 3.

(b) Within ten (10) business days after service of the notice of claim, the contractor, subcontractor, supplier, or design professional may inspect the structure to assess each alleged construction defect. The claimant shall provide the contractor, subcontractor, supplier, or design professional and its contractors or agents reasonable access to the structure during normal working hours to inspect the structure, to determine the nature and cause of each alleged construction defect and the nature and extent of any corrections, repairs or replacements necessary to remedy each defect. The inspection may include destructive testing. Prior to performing any destructive testing, the person who desires to perform the testing shall notify the claimant in writing of the type of testing to be performed, the anticipated damage to the structure which will be caused by the testing, and the anticipated corrections or repairs that will be necessary to correct or repair any damage caused by the testing. The person performing the testing is responsible for correcting and repairing any damage to the structure caused by the testing.

(c) Within ten (10) days after service of the notice of claim, the contractor, subcontractor, supplier, and design professional must forward a copy of the notice of claim to each subcontractor, supplier, or design professional who

it reasonably believes is responsible for each defect specified in the notice of claim and shall note the specific defect for which it believes the particular subcontractor, supplier, or design professional is responsible. Each such subcontractor, supplier, and design professional may inspect the structure as provided in subsection (b) within ten (10) business days after receiving a copy of the notice.

(d) Within ten (10) business days after receiving a copy of the notice of claim, the subcontractor, supplier, or design professional must serve a written response to the contractor, subcontractor, supplier, or design professional who served a copy of the notice of claim. The written response shall include a report of the scope of any inspection of the structure, the findings and results of the inspection, a statement of whether the subcontractor, supplier, or design professional is willing to make corrections or repairs to the structure or whether it disputes the claim, a description of any corrections or repairs it is willing to make to remedy the alleged construction defect, and a timetable for the completion of such corrections or repairs.

(e) Within thirty (30) days after receiving the notice of claim, each contractor, subcontractor, supplier, or design professional must serve a written response to the claimant. The written response must provide:

(1) A written offer to remedy the alleged construction defect at no cost to the claimant, including a report of the scope of the inspection, the findings and results of the inspection, a detailed description of the corrections or repairs necessary to remedy the defect, and a timetable for the completion of such repairs;

(2) A written offer to compromise and settle the claim by monetary payment to be paid within thirty (30) days after the claimant's acceptance of the offer; or

(3) A written statement that the contractor, subcontractor, supplier, or design professional disputes the claim and will not remedy the defect or compromise and settle the claim..

(f) If the contractor, subcontractor, supplier, or design professional offers to remedy the alleged construction defect or compromise and settle the claim by monetary payment, the written response must contain a statement that the claimant shall be deemed to have accepted the offer if, within fifteen (15) days after service to the written response, the claimant does not serve a written rejection of the offer on the contractor, subcontractor, supplier, or design professional.

(g) If the contractor, subcontractor, supplier, or design professional does not respond to the claimant's notice of claim within the time provided in subsection (e), the claimant may, without further notice, proceed with an action against the contractor, subcontractor, supplier or design professional for the claim described in the notice of claim.

(h) A claimant who rejects a settlement offer made by the contractor, subcontractor, supplier, or design professional must serve written notice of such rejection on the contractor, subcontractor, supplier, or design professional within fifteen (15) days after service of the settlement offer. The claimant's rejection must contain the settlement offer with the word "rejected" printed on it.

(i) If the claimant accepts the offer of a contractor, subcontractor, supplier, or design professional and the contractor, subcontractor, supplier, or design professional does not make the payment, correction or repair the defect within the agreed time and in the agreed manner, the claimant may, without further notice, proceed with an action against the contractor, subcontractor, supplier or design professional. If a claimant accepts a contractor, subcontractor, supplier, or design professional's offer and the contractor, subcontractor, supplier, or design professional makes payment, correction or repairs the defect

within the agreed time and in the agreed manner, the claimant is barred from proceeding with an action against the contractor, subcontractor, supplier, or design professional for the claim described in the notice of claim.

(j) If the claimant accepts the offer of a contractor, subcontractor, supplier, or design professional to correct or repair an alleged construction defect, the claimant shall provide the contractor, subcontractor, supplier, or design professional and its contractors or other agents reasonable access to the claimant's structure during normal working hours to perform the correction or repair by the agreed-upon timetable as stated in the offer.

(k) The failure of a claimant or a contractor, subcontractor, supplier, or design professional to follow the procedures in this section is admissible in an action. However, this section does not prohibit or limit the claimant from making any necessary emergency corrections or repairs to the structure. In addition, the offer of a contractor, subcontractor, supplier, or design professional to remedy an alleged construction defect or to compromise and settle the claim by monetary payment does not constitute an admission of liability with respect to the defect.

(l) A claimant's written notice of claim under subsection (a) tolls the applicable statute of limitations until the later of:

(1) One hundred eighty (180) days after the contractor, subcontractor, supplier, or design professional receives the notice; or

(2) Ninety (90) days after the end of the correction or repair period stated in the offer, if the claimant has accepted the offer. By stipulation of the parties, the period may be extended and the statute of limitations is tolled during the extension.

(m) The procedures in this section apply to each alleged construction defect. However, a claimant may include multiple defects in one notice of claim.

(n) Sections 2 through 4 of this act do not:

(1) Bar or limit any rights, including the right of specific performance to the extent such right would be available in the absence of this act, any causes of action, or any theories on which liability may be based, except as specifically provided in this act;

(2) Bar or limit any defense, or create any new defense, except as specifically provided in this act;

(3) Create any new rights, causes of action, or theories on which liability may be based; or

(4) Extend any existing statute of limitations except as specifically provided herein in subsection (l).

SECTION 5. If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this act which can be given effect without the invalid provisions or application, and to this end the provisions of this act are declared severable.

SECTION 6. This act shall take effect upon becoming a law and shall apply to all actions accruing on or after the effective date.